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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,240	01/26/2004	Randall M. Marich	GP-302177	1775

7590 04/12/2006

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EXAMINER

JOHNSON, VICKY A

ART UNIT	PAPER NUMBER
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3682

DATE MAILED: 04/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/765,240	MARICH, RANDALL M.	
	Examiner	Art Unit	
	Vicky A. Johnson	3682	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 10-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-13, 15-20, and 22-24 is/are rejected.
- 7) ☐ Claim(s) 14 and 21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group II in the reply filed on January 27, 2006 is acknowledged. The traversal is on the ground(s) that the subject matter of groups I and II are sufficiently related such that an undue burden would not be presented to the Examiner. This is not found persuasive because the transmission assembly requires a different search than the cover, the combination as claimed does not require the particulars of the subcombination as claimed because the transmission assembly does not require a guard plate.

The requirement is still deemed proper and is therefore made FINAL.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.84(h)(5) because Figure 3 show(s) modified forms of construction in the same view. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each

drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "222" has been used to designate both the cover in Figure 3 and the cover in Figure 6. These covers cannot be the same because the removable tang is radial in Figure 3 and axial in Figure 6. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the guard plate including a plurality of apertures having portions of the shield positioned in the apertures must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 10 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Rullmann et al (US 6,370,751).

Rullmann et al disclose a cover (14, 16, 18) for an axle seal aperture, the axle seal being coupled to a transmission housing, the cover comprising: a guard plate (18) having an aperture extending there through, said guard plate being adapted to engage the axle seal (20) and couple said guard plate thereto; a shield (14,16) having a first portion (16) and a detachable second portion (14), said first portion being coupled to said guard plate (see Fig 1), said shield enclosing said guard aperture when said second portion is attached to said first portion (see Fig 1), said first portion defining an aperture aligned with said guard aperture when said second portion is detached from said first portion (see Fig 1).

Re claim 11, said guard plate includes an annular lip adapted to be engageable with the axle seal to couple the cover to the axle seal (see Fig 1).

7. Claims 10, 11, 15-19, 23, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Halliday, Jr. et al (US 4,815,884).

Halliday Jr. et al disclose a cover (28, 30, 10, 60) for an axle seal aperture, the axle seal being coupled to a transmission housing, the cover comprising: a guard plate (28, 30) having an aperture extending therethrough, said guard plate being adapted to engage the axle seal (25) and couple said guard plate thereto; a shield (10, 60) having a first portion (10) and a detachable second portion (60), said first portion being coupled to said guard plate (see Fig 1), said shield enclosing said guard aperture when said second portion is attached to said first portion (see Fig 1), said first portion defining an aperture aligned with said guard aperture when said second portion is detached from said first portion (see Fig 1).

Re claim 11, said guard plate includes an annular lip adapted to be engageable with the axle seal to couple the cover to the axle seal (see Fig 1).

Re claim 15, said guard plate includes a conically shaped section positioned adjacent said annular lip, said conically shaped section adapted to cover a portion of the axle seal (see Fig 1).

Re claim 16, said guard plate includes an annular flange positioned adjacent said conically shaped section, said guard plate aperture extending through said annular flange (see Fig 1).

Re claim 17, a cover comprising: a tubular guard structure (28, 30) having a substantially cylindrical wall portion positioned adjacent to a substantially conical wall portion (see Fig 1), said cylindrical wall portion being adapted to engage the axle seal and couple the cover to the axle seal (see Fig 1; and a shield (10, 60) having a first portion (10) and a detachable second portion (60), said first portion being coupled to said guard structure (see Fig 1), said shield enclosing one end of said guard structure when said second portion is attached to said first portion (see Fig 1), said first portion defining an aperture in communication with a passage defined by said tubular guard structure when said second portion is detached from said first portion (see Fig 1).

Re claim 18 said guard structure includes a radially inwardly extending annular flange positioned adjacent to said conical wall portion (unnumbered, see Fig 1).

Re claim 19, said annular flange defines a guard aperture aligned with said first portion aperture (unnumbered, see Fig 1).

Re claim 23, said second portion includes a cylindrically shaped hollow wall (see Fig 1).

Re claim 24, said cylindrically shaped hollow wall includes a longitudinal axis aligned with a longitudinal axis of said tubular guard structure (see Fig 1).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 12, 13, 20, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Halliday, Jr. et al (US 4,815,884).

Halliday Jr. et al disclose a cover as described above, but do not disclose the shield constructed from an injection moldable material.

It would have been obvious to one having ordinary skill in the art to modify the cover of Halliday Jr. et al from an injection moldable material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416.

Re claim 13, said first portion includes an outwardly extending tang (72) selectively engageable by an operator to separate said first portion from said second portion.



Re claim 21, said first portion includes an outwardly extending tang (72) selectively engageable by an operator to separate said first portion from said second portion.

***Allowable Subject Matter***

10. Claims 14 and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

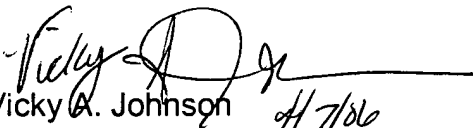
5,505,525	Denton	(cover)
6,244,600	Letureq	(cover)
2,860,535	Fowler	(detachable tang)
5,052,695	Curtis	(cover)
4,218,813	Cather, Jr.	(cover)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vicky A. Johnson whose telephone number is (571) 272-7106. The examiner can normally be reached on Monday-Friday (7:00a-3:30p).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on (571) 272-6217. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3682

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Vicky A. Johnson  
Primary Examiner  
Art Unit 3682